

ORIGINAL

COMPETITIVE
TELECOMMUNICATIONS
ASSOCIATION

ADVANCING
GLOBAL
COMMUNICATIONS
THROUGH
COMPETITION

1900 M STREET, NW, SUITE 800
WASHINGTON, DC 20036-3508

PH: 202.296.6650

FX: 202.296.7585

www.comptel.org



EX PARTE OR LATE FILED

May 14, 2001

Via Hand Delivery

RECEIVED

MAY 14 2001

ORIGINAL

Ms. Magalie Roman Salas
Secretary

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

~~FEDERAL COMMUNICATIONS COMMISSION~~
OFFICE OF THE SECRETARY

Re: Joint Petition of BellSouth, SBC, and Verizon, CC Docket No. 96-98

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel") hereby gives notice that it sent the attached letter, via hand delivery, to Common Carrier Bureau Chief Dorothy Attwood today.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan D. Lee".

Jonathan D. Lee
Vice President,
Regulatory Affairs

No. of Copies rec'd 071
List A B C D E



May 14, 2001

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Attwood:

BellSouth, SBC, and Verizon have asked the Commission to do what it expressly said in the *UNE Remand Order* that it would not do – entertain an *ad hoc* petition to remove elements from the list of mandatory unbundled network elements outside of the triennial review process established in that order. Specifically, they filed a petition asking that the Commission remove unbundled loops and transport links of DS-1 or greater capacity from the list of mandatory unbundled elements.¹

The Competitive Telecommunications Association (“CompTel”) supports the Motion to Dismiss the Joint Petition that was filed on April 25, 2001 by NewSouth Communications. As NewSouth’s motion demonstrates, the Joint Petition is procedurally defective in that it violates the Commission’s three-year quiet period and does not follow the Commission’s rules governing requests for a repeal of existing rules. For these reasons alone, the Commission should dismiss the Joint Petition immediately. If the industry cannot rely on the Commission’s express policy for regular review of the unbundling list, then competitive carriers will never be able to establish business plans on which they and their investors can depend.

In addition to its manifest procedural defects, the Joint Petition has also been shown to be devoid of any factual predicate on which the Commission could base a decision to amend the list of mandatory unbundled network. The Joint Petition was based entirely on a so-called “fact” report prepared by a lawyer for the BOCs.² AT&T and other commenters have persuasively shown that the BOC “fact” report is utterly unreliable and can be given no weight.

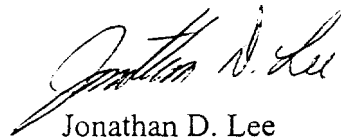
¹ Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport (filed April 5, 2001).

² Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport.

With its reply comments in the EELs proceeding (filed April 30, 2001), AT&T included a sworn affidavit from one of its employees. That affidavit demonstrates clearly that the "fact" report is deeply flawed both in its design and its assertions of fact. By double-counting, inflating, and other errors, the "fact" report grossly exaggerates every measure of the competitive alternatives to BOC loop and transport facilities that it purports to present. These conclusions are also supported by the reply comments filed in the EELs proceeding by WorldCom, ITC DeltaCom, and others. Given the "fact" report's wildly inaccurate conclusions, the Commission could give it no weight.

Thus, the Commission would be correct to dismiss the BOCs' petition; if only for the procedural defects alone detailed in NewSouth's motion. AT&T and other commenters have also shown that there is no factual predicate on which the petition could be granted even if the Commission disregarded those procedural defects. In these circumstances, continuance of this proceeding will accomplish little except to squander resources on a needless proceeding and generate continued uncertainty about the prospects of CLECs that utilize unbundled loops and transport. Given the shaky procedural and substantive foundations of this pleading, the Commission should dismiss the Joint Petition immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan D. Lee", written in a cursive style.

Jonathan D. Lee
Vice President,
Regulatory Affairs